

incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Agency policy shall include methods by which staff can report misconduct outside of their chain of command.

(b) Staff members who become aware of alleged sexual abuse shall immediately follow the reporting requirements set forth in the agency's written policies and procedures.

(c) Apart from such reporting, the agency and staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to help protect the safety of the victim or prevent further victimization of other detainees or staff in the facility, or to make medical treatment, investigation, law enforcement, or other security and management decisions.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

#### **§ 115.162 Agency protection duties.**

When an agency employee has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, he or she shall take immediate action to protect the detainee.

#### **§ 115.163 Reporting to other confinement facilities.**

(a) Upon receiving an allegation that a detainee was sexually abused while confined at another facility, the agency that received the allegation shall notify the appropriate office of the agency or the administrator of the facility where the alleged abuse occurred.

(b) The notification provided in paragraph (a) of this section shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The agency office that receives such notification, to the extent the facility is covered by this subpart, shall ensure that the allegation is referred

for investigation in accordance with these standards.

#### **§ 115.164 Responder duties.**

(a) Upon learning of an allegation that a detainee was sexually abused, the first law enforcement staff member to respond to the report, or his or her supervisor, shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the sexual abuse occurred within a time period that still allows for the collection of physical evidence, request the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a law enforcement staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify law enforcement staff.

#### **§ 115.165 Coordinated response.**

(a) The agency shall develop a written institutional plan and use a coordinated, multidisciplinary team approach to responding to sexual abuse.

(b) If a victim of sexual abuse is transferred between facilities covered by subpart A or B of this part, the agency shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services.

(c) If a victim is transferred from a DHS holding facility to a facility not covered by paragraph (b) of this section, the agency shall, as permitted by law, inform the receiving facility of the incident and the victim's potential

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need for medical or social services, unless the victim requests otherwise.

### § 115.166 Protection of detainees from contact with alleged abusers.

Agency management shall consider whether any staff, contractor, or volunteer alleged to have perpetrated sexual abuse should be removed from duties requiring detainee contact pending the outcome of an investigation, and shall do so if the seriousness and plausibility of the allegation make removal appropriate.

### § 115.167 Agency protection against retaliation.

Agency employees shall not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in sexual activity as a result of force, coercion, threats, or fear of force.

## INVESTIGATIONS

### § 115.171 Criminal and administrative investigations.

(a) If the agency has responsibility for investigating allegations of sexual abuse, all investigations into alleged sexual abuse must be prompt, thorough, objective, and conducted by specially trained, qualified investigators.

(b) Upon conclusion of a criminal investigation where the allegation was substantiated, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the agency shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS and the assigned criminal investigative entity.

(c) The agency shall develop written procedures for administrative investigations, including provisions requiring:

(1) Preservation of direct and circumstantial evidence, including any available physical and DNA evidence

and any available electronic monitoring data;

(2) Interviewing alleged victims, suspected perpetrators, and witnesses;

(3) Reviewing prior complaints and reports of sexual abuse involving the suspected perpetrator;

(4) Assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual's status as detainee, staff, or employee, and without requiring any detainee who alleges sexual abuse to submit to a polygraph;

(5) Documentation of each investigation by written report, which shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings; and

(6) Retention of such reports for as long as the alleged abuser is detained or employed by the agency, plus five years. Such procedures shall establish the coordination and sequencing of the two types of investigations, in accordance with paragraph (b) of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.

(d) The departure of the alleged abuser or victim from the employment or control of the agency shall not provide a basis for terminating an investigation.

(e) When outside agencies investigate sexual abuse, the agency shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

### § 115.172 Evidentiary standard for administrative investigations.

When an administrative investigation is undertaken, the agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

## DISCIPLINE

### § 115.176 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary or adverse action up to and including removal from their position